IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15160 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT MUNICIPAL CORPORATION THR' ITS COMMISSIONER - Petitioner(s)

Versus

DAHIBEN JETHABHAI - Respondent(s)

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Appearance :
MR PRASHANT G DESAI for Petitioner No(s).: 1.
None for Respondent No(s).: 1.
MR BS SUPEHIA for Respondent No(s).: 1 - 1.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/08/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner – Surat Municipal Corporation has challenged the legality and validity of the judgment and Award dtd.30/3/2005 passed by the Labour Court, Surat in Reference (LCS) No.349 of 1996, by which the Labour Court has partly allowed the said reference directing the petitioner herein to pay the back wages for the period from 1-2-997 to 3-7-1998 to the heirs of the deceased workman.

2.It appears from the record that the deceased workman was serving as a Driver with the petitioner Corporation and as he was unauthorized absent w.e.f.1/2/1987 and inspite of repeated reminders, he did not report for duty, he was served with the chargesheet and show cause notice which was not replied by the

deceased workman and thereafter, considering the provisions of Sec.56(2)(h) of the Bombay Provincial Municipal Corporations Act (hereinafter referred to as “the B.P.M.C. Act” for short), the petitioner dismissed the deceased workman. Being aggrieved by the order of dismissal, the deceased workman raised an Industrial Dispute after six years which was referred to the Labour Court, Surat for its adjudication being Reference (LCS) No.349 of 1996. The Labour Court held that the deceased workman might have been absent as he was suffering from Tuberculosis (TB) and that though the workman might have gone to resume the duty subsequently, he might not have been permitted to resume his duty and no departmental inquiry has been held, and therefore, while observing that it is not proper to pay back wages, passed an award to treat the service of the deceased workman as continuous service till his death dtd.3/7/1998

and that he will be entitled to all other benefits. However, while passing the operative portion of the order, the Labour Court, Surat granted back wages from the date of dismissal till the death of the deceased workman i.e. 3/7/1998. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Surat, dtd.30/3/2005 in Reference (LCS) No.349 of 1996 in directing th petitioner to pay back wages from the date of dismissal till 3/7/1998 i.e. w.e.f. 1-2-187 till 3-7-1998 and to pay other benefits of the deceased workman, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3.In this petition, the following facts emerge for the purpose of determination of the present petition:-

4.The deceased workman was absent without getting leave sanctioned and without informing the department w.e.f. 1-2-1987. He was directed to

resume duty vide communication dtd.14/2/1987 and 9/4/1988 and again he was directed on 18/3/1988 to report for duty, however, the deceased workman did not report for duty. He was served with the chargesheet on 2/8/1989. However, he did not file any reply to the chargesheet and did not give any reply to the show cause notice also and ultimately by order dtd.21/9/1990, he came to be dismissed in view of the provisions of sec.56(2)(h) of the BPMC Act. Thereafter, the deceased workman raised an industrial dispute in the month of June, 1996 after a period of about six years and he died on 3/7/1998.

5.Mr.Desai learned advocate appearing on behalf of the petitioner corporation has vehemently submitted that when the deceased workman was absent without getting the leave sanctioned for a long period and when even did not report for duty inspite of the several reminders, and even did not reply to the chargesheet and show cause

notice, it was a case of voluntary abandonment of job and therefore, the Labour Court was not justified in directing the petitioner to pay back wages to the heirs of the deceased workman up to 3/7/1998 and to pay all other benefits to the heirs of the deceased workman. It is also further submitted by Mr.Desai that pursuant to the notices dtd.14/3/1987 and 9/4/1987 the deceased workman was directed to report for duty but there was no response from the deceased workman. However, he tried to report for duty on 12/6/1987, along with the medical certificate and he was directed to report for duty before the Health Officer on 17/6/1987. However, the deceased workman did not report for duty before the Health Officer and thereafter till 990 i.e. till the order of dismissal. It is also further submitted by Mr.Desai that when the order of dismissal came to be challenged by the deceased workman after six years by raising an industrial dispute,

firstly the referent was not required to be entertained at all and/or there was no question of payment of back wages from the date of dismissal till even reference i.e. from 1987 to 1996, as the deceased workman himself has raised the industrial dispute in 1996 i.e. after a period of six years and to grant back wages would be giving a premium to a person who himself has raised the dispute belatedly and therefore, it is requested to allow the present petition.

6. Mr.Desai has relied upon the decisions reported in (2005) 5 SCC 91 and in (2005) 5 SCC 341, in support of his submissions that for remaining absent and not reporting for duty though various reminders, it is clear that it is a case of voluntary abandonment of job, for which no departmental inquiry is required to be initiated and only show cause notice is sufficient and therefore, it is requested to allow the present petition.

7.On the other hand, Mr.B.S. Supehia learned advocate appearing the respondent has initially tried to support the judgement and Award passed by the Labour Court awarding back wages from the date of dismissal till death of the workman on 3/7/1998. However, having realized that the deceased workman himself raised the Industrial Dispute after a period of six years from the date of dismissal,he has submitted that the respondent may be awarded some back wages. It is further submitted by him that the deceased workman was suffering from Tuberculosis (TB) and therefore he did not report for duty and therefore, it is a fit case for awarding the some back wages.

8.Heard Mr.Prashant G. Desai, learned advocate appearing on behalf of the petitioner and Mr. BS Supehia, learned advocate for the respondent.

9.Having heard the learned advocates appearing on behalf of the parties and considering the

material on record, it is not in dispute that the deceased workman was absent from from 1-2-1987 till the date of dismissal i.e. 21/9/1990 unauthorizedly and without getting the leave sanctioned and without informing the department. Several reminders / notices were served to the deceased workman to report for duty. However, the deceased workman did not report for duty and in fact, there was no reply to the notices and the chargesheet issued by the petitioner Corporation. The Hon'ble Supreme Court in the aforesaid decision has held that if the workman is absent for a long period and without getting the leave sanctioned and inspite of various reminders, he does not report for duty, it can be presumed that he is not interested in job and therefore, departmental inquiry is not required and if some show cause notices are issued, the same are in compliance with the principles of natural justice. Considering the aforesaid

circumstances, it is clear that it is a case of voluntary abandonment of job and/or the deceased workman was not interested in job. Neither any medical certificate was produced nor any leave report was submitted by the deceased workman and therefore the action of the petitioner Corporation in dismissing the workman from service was just and proper and there was no question of payment of back wages to the heirs of the deceased workman. The deceased workman was dismissed from service on 21/9/1990 and the workman raised an industrial dispute in the month of June, 1996 i.e. after a period of six years and hence also, back wages is not required to be paid. Under the circumstances, when there was delay on the part of the workman in raising the disputed, there was no question of paying the back wages. These aspects have not been considered by the Labour Court. It is also required to be noted that in the last para of the judgment and award, the

Labour Court itself has observed that the deceased workman is not to be granted any back wages, however will be entitled to continuity of service and all other service benefits, still in the operative portion of the judgement and award, the Labour Court has awarded full back wages from the date of dismissal i.e. 1-2-1987 till 3-7-1998, which is also perverse and hence the same is required to be quashed and set aside.

10.For the reasons stated hereinabove, the petition succeeds. The judgment and Award dtd.30/3/2005 passed by the Labour Court, Surat in Reference (LCS) No.349 of 1996 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R. SHAH, J.)

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